Petition

81-597

No. 81-

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In the Supreme Court of the United States

October Term, 1981

LEWIS W. POE,
Petitioner,

vs.

THE SUPREME COURT OF THE UNITED STATES, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LEWIS W. POE
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Petitioner Pro Se

September, 1981

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QUESTION PRESENTED

In a lawsuit involving no damages, are the defendant Supreme Court Justices, individually and/or collectively, accountable for their behavior and omissions, *and* answerable to the Constitution and laws of the United States? Or, are the defendant Justices absolutely immune from *non-damage* suits which seek only injunctive, declaratory, and equitable relief?

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Mr. Poe, petitioner, prays for a writ of certiorari to review the judgment of the U. S. Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

None.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

The judgment of the Court of Appeals (App. B, *infra*, p. A3) was entered on March 30, 1981. A petition for rehearing was denied on July 24, 1981. See App. C, *infra*, p. A4.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 1 of the U. S. Constitution provides that "All legislative Powers herein granted shall be vested in a Congress * * *."

Article III, Section 1 of the Constitution provides that "The judicial Power of the United States shall be vested in one supreme Court * * *."

Article III, Section 2, Clause 1 provides that "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and * * *."

Article VI, Clause 2 provides that "This Constitution, and the Laws of the United States * * *, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, * * *."

Article VI, Clause 3 provides that "all executive and judicial Officers, * * *, shall be bound by Oath or Affirmation, to support this Constitution; * * *."

28 U.S.C. 453 provides that:

> "Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office:
>
> > 'I, ..., do solemnly swear (or affirm) that I will administer justice * * *, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me * * *, agreeably to the Constitution *and laws of the United States*. So help me God.' " (Emphasis supplied.)

Section 2 of Public Law 93-253, 88 Stat. 50 provides:

"Sec. 2. Section 2680(h) of title 28, United States Code, is amended * * * inserting * * * the following: "*Provided*, That, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising, * * *, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, 'investigative or law enforcement officer' means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law. Approved March 16, 1974."

STATEMENT OF THE CASE

This civil action arose under the Constitution and laws of the United States and is against the U. S. Supreme Court and the Justices thereof for equitable, declaratory, and injunctive relief. This is *not* an action for damages against the defendants. It is an action to review the conduct of the defendants and to compel them to perform their *sworn* duty.

The defendants have violated Articles I and VI of the Constitution. Further, they have violated their oath of office, which was taken pursuant to 28 U.S.C. 453. They have *failed* to faithfully discharge their public duties. They have *failed* to uphold and to enforce a valid law, namely, P.L. 93-253, § 2, 88 Stat. 50. In effect, they have usurped a legislative power of Congress. They have *failed* to properly supervise and to correct the courts below.

On August 27, 1979, Mr. Poe filed a Complaint in Civil No. 79-0362 in the U. S. District Court of Hawaii. Service

was completed the same day upon all defendants. Thus, *each defendant has a copy of said complaint.* Please refer to it. On September 6, 1979, the District Court dismissed the action with prejudice, *sua sponte*,[1] before an Answer was filed by the defendants. Judgment was filed the same day.

On Sept. 18, 1979, Mr. Poe filed a Notice of Appeal. After briefing by Mr. Poe alone[2]—no appellate brief was submitted by the defendants—the 9th Circuit Court of Appeals affirmed the judgment below on March 30, 1981 in an *unpublished* Memorandum.[3] On April 9, 1981, Poe filed a Petition For Rehearing with suggestion *en banc*.[4] On July 24, 1981, the Court of Appeals filed its Order, denying said petition for rehearing.

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1. See Appendix D at p. A5.

2. Each defendant Justice of *this* Court was served on Nov. 13, 1979 with two copies of the Brief of the Appellant and one copy of the accompanying Excerpt of the Record.

3. Appendix A, at p. A1. Concerning this unpublished Memorandum, Mr. Poe did *not* appeal the district court's dismissal *for the reasons* stated by 9th Circuit Judges Anderson, Alarcon, and Poole.

4. Each defendant Justice of this Court was served on April 7, 1981 with two copies of the Petition for Rehearing with Suggestion *en banc*. On pages 4-6 therein, Mr. Poe pertinently wrote:

> "(B) Said panel of 3 judges *deliberately misstated* the nature of the instant case. (CR 1) The instant action against the defendant Justices was *not* brought because of a denial of a petition for a writ of certiorari. This misstatement of fact is outrageous and disgraceful. * * *."
>
> "CONCLUSION
>
> "A panel of 3 jurists did not overlook the real nature of this action. Instead, the panel disregarded it—first, by misstating the case to suit its own design, and, secondly, by misusing the common law doctrine of judicial immunity when it clearly did not apply. The panel purposefully rationalized away the constitutional issues * * *."

Thus, each defendant Justice has sufficient documentation *in his possession* to ascertain the real truth in this case and the mendacities promulgated by the lower courts. The formal publication of Appendices A, B, C, and/or D herein in no way infers their validity.

REASONS FOR GRANTING THE WRIT

A writ of certiorari should issue because the Court of Appeals has rendered a decision which is in direct conflict with established federal common law. Also, the Court of Appeals, in citing *Stump v. Sparkman*, 435 U.S. 349 (1978) in its Memorandum, has *refuted itself*.

A panel of the 9th Circuit has proclaimed that the defendant Justices of the Supreme Court are absolutely immune from a civil *non-damage* lawsuit, i.e., immune from *non-monetary* liability. The Court of Appeals is rewriting the doctrine of judicial immunity which was developed by this Court and has existed for the benefit of the public—not for the direct benefit of a judge *per se*. The public interest is at the core of the immunity doctrine. Thus we say that public policy requires that a judge be protected from *monetary liability* to insure his judicial independence —for the benefit of the public. The Supreme Court recognized this principle when it concluded that Judge Stump was immune from *damages* liability and when it quoted *Bradley v. Fisher*, 13 Wall 335, 347 (1872):

> "a judicial officer, * * *, (should) be free to act upon his own convictions, without apprehension of personal consequences to himself." *Stump, supra*, at 355.

In the instant case, Mr. Poe did *not* seek any damages from any defendant Justice. He sought declaratory, injunctive, and equitable relief. Thus each defendant Justice, including the defendant Supreme Court, was "*without* apprehension of personal consequences to himself." Mr. Poe was only asking the defendants to do their public duty, pursuant to their oath under 28 U.S.C. 453.

Mrs. Sandra O'Connor, perhaps the first woman Justice of the Supreme Court—America is counting on you. . .

to bring the other Justices back to their oath of office and to their *own* authoritative words:

> "Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law:
>
> > 'No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. * * *.' *United States v. Lee*, 106 U.S., at 220." *Butz v. Economou*, 438 U.S. 478, 506 (1978). See also *Halperin v. Kissinger*, 606 F.2d 1192, 1213 (D.C. Cir. 1979), *affirmed* ..... U.S. ..... (June 22, 1981), 49 LW 4782 (June 23, 1981).

The Court of Appeals applied the doctrine of judicial immunity much too broadly . . . to include damage *and* non-damage lawsuits. The Court of Appeals grossly misapplied the defense of judicial immunity to the instant case wherein *not* one iota of damages was sought by Mr. Poe. To misuse the law to sidestep a federal question should not be condoned by this Court, even though this Court is itself an actual defendant herein. The objectivity of this Court will now be tested.

In citing *Stump, supra*, the Court of Appeals refuted itself. A perusal of *Stump* by even an average law student will show that:

(1) The Sparkmans "sought damages for alleged violation of Linda Sparkman's constitutional rights." *Stump, supra*, at 353.

(2) At the very beginning of its Opinion, the Supreme Court wrote:

> "This case requires us to consider the scope of a judge's immunity from *damages* liability * * *." (Emphasis added.) *Stump, supra*, at 351.

(3) The Supreme Court concluded that "neither the procedural errors he may have committed nor * * * rendered him (Judge Stump) liable *in damages* * * *." (Emphasis added.) *Stump, supra,* at 359-360.

(4) The Judge "is, therefore, * * *, immune from *damages* liability * * *." (Emphasis added.) *Stump, supra,* at 364.

(5) Even Justice Stewart, with whom Justices Marshall and Powell joined, *in dissent,* wrote:

> "It is established federal law that judges * * * are absolutely immune from monetary liability * * *." *Stump, supra,* at 364-365.

The doctrine of judicial immunity applies to civil *damage* suits—not to suits seeking injunctive or equitable relief.

In this case, the courts below cannot demonstrate that absolute immunity is essential for the conduct of the public business. *Just the opposite is true.* If the present defendants were to self-servingly create a new and expanded version of the judicial immunity doctrine which would include *non-damage* suits against judges, then the defendant Supreme Court would be able *to avoid* its duty of carrying forth the public business. Self-serving immunity in this case would work to the detriment of the American public and to our nation in general. Thus, a moment of truth has arrived for this Court.

Furthermore, Mr. Poe alleged, *and his allegations are undisputed*: (a) Defendants disregarded and failed to uphold and to enforce P.L. 93-253, § 2; (b) six of the Defendants failed to discharge their public duties in violation of 28 U.S.C. 453; (c) Defendants failed to properly and adequately supervise and to correct the courts below; (d) Defendants failed to construe P.L. 93-253, § 2, for the bene-

fit of all Americans, thereby failing to inform the public on the meaning, nature, and scope of said law. This failure is exacerbated by the following powerful facts (which are contained in Poe's Complaint) (verbatim):

35. On February 4, 1977, the District Court ruled in open court:

> "* * * and I'm not at all confident that I know what the law is right now, * * *. But, in the absence of some teaching from my superiors in the appellate divisions, it appears to me that this case is governed by Feres * * *, and I'll grant the (defendant's) motion to dismiss."

39. At said hearing before the Ninth Circuit Court of Appeals, Mr. Poe said:

> "It is clear to me what this law says. However, we are here today to await this Court's wise and jurisprudential construction of this statute * * *."

42. *No opinion was rendered* by the Ninth Circuit on the judicial interpretation of P.L. 93-253, § 2, which was the principal issue before the court.

43. On May 22, 1978, Attorney Brook Hart of Honolulu filed a notice of appearance as attorney for Mr. Poe and simultaneously filed a Petition for Rehearing *en banc* in the Ninth Circuit Court of Appeals, stating on pages 8-9 therein:

> "Since the allegations in the Complaint must be regarded as true, *28 U.S.C. 2680(h) clearly applies* to the instant case. This statute further *defines* 'investigative or law enforcement officer' to mean 'any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.' Clearly, a law

enforcement officer of the U. S. Government is an employee of the government. According to 28 U.S.C. 2671, an employee of the government *includes* 'members of the military or naval forces of the United States.'

However, *it is possible* that this Court of Appeals has narrowly construed P.L. 93-253, § 2 as providing a rememdy (sic) *only* for civilians and *not* for servicemen. If this is so, then this Court is respectfully requested to so rule in a published opinion. What appears to be this Court's view seems inconsistent with (a) the broad and clear language of the statute, (b) Senate Report No. 93-588, (c) *Bivens v. Six Unknown Named Agents,* 403 U.S. 388, 395-398 (1971), and (d) the Fourth and Fifth Amendments to the Constitution."

45. On October 10, 1978, Mr. Brook Hart filed in the U. S. Supreme Court a Petition for a Writ of Certiorari to the U. S. Court of Appeals for the Ninth Circuit, stating on pages 12-14 therein:

"1. The decisions of the District Court and the Court of Appeals are in apparent conflict with statutory law, * * *.

* * *.

2. The conclusions of the courts below, apparently ignoring the explicit language of P.L. 93-253, § 2, mandate that this Court exercise its power to authoritatively interpret the law to insure uniformity in the administration of justice and to insure fairness to the plaintiff in the instant case. An articulated, judicial interpretation of P.L. 93-253, § 2, would discharge a

basic function of this Court; the meaning of the important federal statute involved in this case cannot be discerned in the *opinionless* rulings of the courts below.

Indeed, the district court invited this Court's participation in this case when, * * *, it stated:

"* * * and I'm not at all confident that I know what the law is right now, * * *' "

46. On December 11, 1978, the defendant Supreme Court denied certiorari, deliberately sidestepping the issue (a federal question) and its duty to tell the plaintiff and the American public what the law is.

Finally, the integrity of our judicial system is at stake. Our Constitution and a law of the United States are being violated by the federal judiciary.

CONCLUSION

The defendant Justices of the Supreme Court *should* grant certiorari and summarily reverse the judgment of the Ninth Circuit Court of Appeals, but petitioner will not be counting on such righteous and lofty behavior.

Without unflinching courage, the defendant Supreme Court is bound to sink to the bowels of failure. It is faced with self-service or a *nobler* service to the spirit and principles espoused in our Constitution. Article VI says: The Constitution and Laws of the United States shall be the Supreme Law of the Land, and Judges shall be bound thereby.

Today could be a cancerous blemish on American jurisprudence . . . or it could be a continuation of two cen-

turies of man's struggle for individual rights and for equal justice under the law. Our Constitution is a *living* Constitution, not just written words of ink on a piece of parchment. P.L. 93-253, § 2 is a living law too. But far more important, each of you took an oath of office, *swearing* to administer justice and to perform faithfully your duties in accordance with the Constitution *and* the laws of the United States.

Formally submitted,

LEWIS W. POE
Petitioner Pro Se

September 3, 1981

APPENDIX

APPENDIX "A"

(Filed March 30, 1981)

UNITED STATES COURT OF APPEALS
For the Ninth Circuit

No. 79-4630
D.C. No. 79-0362

LEWIS W. POE,
Plaintiff-Appellant,

v.

THE SUPREME COURT OF THE UNITED STATES, et al.,
Defendants-Respondents.

On Appeal from the United States District Court
for the District of Hawaii

SAMUEL P. KING, DISTRICT JUDGE, PRESIDING

MEMORANDUM

Submitted: December 29, 1980

Before: ANDERSON, ALARCON and POOLE, Circuit Judges

Poe appeals from the district court's sua sponte dismissal of his action against the United States Supreme Court for denying his petition for writ of certiorari, arguing that the dismissal denied him due process. A review on writ of certiorari is not a matter of right and can be withheld for any reason that the Court sees fit. Sup. Ct. R. 19.1; *Hyde v. Shine*, 199 U. S. 62, 85 (1905).

Justices of the United States Supreme Court are absolutely immune from liability for any action taken within the scope of their authority under 28 U.S.C. 1234(1) even if such action was taken in error. *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978).

AFFIRMED.

APPENDIX "B"

(Filed August 10, 1981)

UNITED STATES COURT OF APPEALS
For the Ninth Circuit

No. 79-4630
DC CV 79-0362 SPK

LEWIS W. POE,
Plaintiff-Appellant,

vs.

THE SUPREME COURT OF THE UNITED STATES, et al.,
Defendants-Respondents.

JUDGMENT

APPEAL from the United States District Court for the ..... District of HAWAII.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the ..... District of HAWAII, and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the ..... judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered March 30, 1981

APPENDIX "C"

(Filed July 24, 1981)

UNITED STATES COURT OF APPEALS
For the Ninth Circuit

No. 79-4630
D.C. No. 79-9362

LEWIS W. POE,
Plaintiff-Appellant,

v.

THE SUPREME COURT OF THE UNITED STATES, et al.,
Defendants-Respondents.

On Appeal from the United States District Court for the District of Hawaii

SAMUEL P. KING, DISTRICT JUDGE, PRESIDING

ORDER

Submitted: December 29, 1980

Before: ANDERSON, ALARCON and POOLE, Circuit Judges

The panel as constituted above has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX "D"

(Filed September 6, 1981)

IN THE UNITED STATES DISTRICT COURT
For the District of Hawaii

CIVIL NO. 79-0362

LEWIS W. POE,
Plaintiff,

vs.

THE SUPREME COURT OF THE UNITED STATES, AND CHIEF JUSTICE WARREN E. BURGER, JUSTICE WILLIAM J. BRENNAN, JR., JUSTICE POTTER STEWART, JUSTICE BYRON R. WHITE, JUSTICE THURGOOD MARSHALL, JUSTICE HARRY A. BLACKMUN, JUSTICE LEWIS F. POWELL, JR., JUSTICE WILLIAM H. REHNQUIST, JUSTICE JOHN PAUL STEVENS, in their official capacities, individually and collectively,
Defendants.

ORDER DISMISSING ACTION WITH PREJUDICE, SUA SPONTE

Lewis W. Poe filed suit against the Supreme Court of the United States, and all the Justices thereof, for denying certiorari in a case plaintiff had brought against the United States. The Justices were charged, *inter alia*, with usurping the legislative power of Congress, violating their oaths of office, and failing to properly supervise the lower federal courts. In his prayer for relief the plaintiff requested this Court to, among other things, issue a writ ordering the defendants to "fully comply with Article VI" of the Constitution of the United States.

The Supreme Court of the United States has the unfettered discretion to either grant or deny certiorari. It is the final arbiter of the Constitution and laws of the United States, and the Justices as individuals are answerable only to Congress in impeachment proceedings. No lower federal court has jurisdiction to question the actions of the Justices in the performance of their official duties.

Wherefore, IT IS ORDERED THAT THIS ACTION IS DISMISSED WITH PREJUDICE, SUA SPONTE.

DATED: Honolulu, Hawaii, September 6, 1979.

/s/ Samuel P. King
United States District Judge